IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 201 OF 2006

Hemlata D'Zouza ... Petitioner

Versus

Bombay Municipal Corporation and Ors. ... Respondents

Mr. M.P. Vashi for Petitioner.

Mr. A.G. Kothari for R. Nos. 2 and 3.

Mrs. S. Ajit Kumar for R. No. 1.

Mr. P.G. Sawant, A.G.P. for R. No. 5.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATED : MARCH 13, 2006

P.C.

. The grievance of the petitioner is that she is a senior most teacher in the primary school and as such ought to have been appointed as Head Mistress and in fact has been serving as Head Mistress. There is however, till date no letter of appointment to the Petitioner issued by the Management as Headmistress.

. The Respondent Management has filed a reply. In the reply, it is pointed out that their secondary

section has been recognised as minority institution being linguistic minority. Similarly the Respondent Corporation has issued circular on 18.10.2004 that in the event the secondary school or junior college has minority status, the primary school of the Institution will also get minority status. On behalf of the Petitioner, the learned counsel submits that a perusal of Section 29 of the M.E.P.S. Act would indicate that the Head of the Institution need not necessarily be the Headmistress. The M.E.P.S. Act is not attracted in the instant case.

. The right of the minority to appoint a Head Master/Head Mistress of their choice is in view of the rights guaranteed to the Minority under Article 30(1) of the Constitution of India. This is the law declared by the Apex Court. Once that be the position, the Petitioner who had joined the respondent school, which is now recognized as linguistic minority school, cannot contend that the senior most teacher should only be appointed as headmistress. That power is conferred on the Management. The Management has also given other

reasons as the circumstances in which they have chosen to appoint Respondent No. 4 instead of Petitioner. We need not to go into that aspect of the matter considering the right of the Management.

. It is also pointed out that non-extension of the provisions of the M.E.P.S. Act to city of Mumbai, would amount to arbitrary action. The primary schools in Mumbai are covered by an independent Code. If the State has chosen not to extend the provisions of the M.E.P.S. Act to primary schools in Mumbai, that cannot be said to be arbitrary. At any rate, this would not be a fit case where this court should examine that issue as even otherwise, the right of the minority institutions appointing Head Masters/Head Mistress is absolute. With the above observations, Petition stands disposed of.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)